



January 23, 2008

HOUSE BILL No. 1329

DIGEST OF HB 1329 (Updated January 22, 2008 11:46 am - DI 114)

Citations Affected: IC 11-13; IC 20-30; IC 34-24; IC 35-38; IC 35-42; noncode.

Synopsis: Sex offenses and children. Provides that, as a condition of probation or parole, a sex offender: (1) must consent to the search of the sex offender's computer at any time; (2) must permit disclosure by the sex offender's Internet service provider of the sex offender's Internet usage; (3) may be prohibited by a probation or parole officer from using or accessing certain web sites, chat rooms, or instant messaging programs; and (4) may not delete, erase, or tamper with information on the sex offender's computer that relates to Internet usage. Requires a school corporation to include a mandatory instructional unit on safely using the Internet for grades 3 and above. Makes it a Class A misdemeanor for a person at least 21 years of age to propose a face to face meeting with a child less than 14 years of age by computer network or cellular telephone text message if the communication between the parties involves a reference to sexual activity, and enhances the crime to a Class D felony for a second or subsequent offense. Specifically provides that law enforcement officials may seize computers and other equipment used to commit or facilitate sex crimes.

Effective: July 1, 2008.

Reske, Murphy, Koch, Hoy

January 15, 2008, read first time and referred to Committee on Judiciary.
January 16, 2008, reassigned to Committee on Technology, Research and Development.
January 22, 2008, amended, reported — Do Pass.

HB 1329—LS 7024/DI 106+



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January 23, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1329

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-13-3-4, AS AMENDED BY P.L.216-2007,
2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 4. (a) A condition to remaining on parole is that
4 the parolee not commit a crime during the period of parole.

5 (b) The parole board may also adopt, under IC 4-22-2, additional
6 conditions to remaining on parole and require a parolee to satisfy one
7 (1) or more of these conditions. These conditions must be reasonably
8 related to the parolee's successful reintegration into the community and
9 not unduly restrictive of a fundamental right.

10 (c) If a person is released on parole, the parolee shall be given a
11 written statement of the conditions of parole. Signed copies of this
12 statement shall be:

13 (1) retained by the parolee;

14 (2) forwarded to any person charged with the parolee's
15 supervision; and

16 (3) placed in the parolee's master file.

17 (d) The parole board may modify parole conditions if the parolee

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HB 1329—LS 7024/DI 106+



receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

(1) consider:

(A) the residence of the parolee prior to the parolee's incarceration; and

(B) the parolee's place of employment; and

(2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

(1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and

(2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a test under this subsection.

(g) As a condition of parole, the parole board:

(1) may require a parolee who is a sex offender (as defined in IC 11-8-8-4.5) to:

(A) participate in a treatment program for sex offenders approved by the parole board; and

(B) avoid contact with any person who is less than sixteen (16) years of age unless the parolee:

(i) receives the parole board's approval; or

(ii) successfully completes the treatment program referred to in clause (A); and

(2) shall:

(A) require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5) to register with a local law enforcement authority under IC 11-8-8;

(B) prohibit a parolee who is a sex offender from residing within one thousand (1,000) feet of school property (as defined

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in IC 35-41-1-24.7) for the period of parole, unless the sex offender obtains written approval from the parole board;
 (C) prohibit a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the victim of the sex offender's sex offense unless the sex offender obtains a waiver under IC 35-38-2-2.5; ~~and~~

(D) prohibit a parolee who is a sex offender from owning, operating, managing, being employed by, or volunteering at any attraction designed to be primarily enjoyed by children less than sixteen (16) years of age;

(E) require a parolee who is a sex offender to consent:

(i) to the search of the sex offender's computer at any time; and

(ii) to the disclosure of the sex offender's Internet usage by the sex offender's Internet service provider; and

(F) prohibit the sex offender from:

(i) accessing or using certain web sites, chat rooms, or instant messaging programs; and

(ii) deleting, erasing, or tampering with information on the sex offender's computer that relates to the person's Internet usage.

The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2)(B), the parole board shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order.

(h) The address of the victim of a parolee who is a sex offender convicted of a sex offense (as defined in IC 35-38-2-2.5) is confidential, even if the sex offender obtains a waiver under IC 35-38-2-2.5.

(i) As a condition of parole, the parole board may require a parolee to participate in a reentry court program.

(j) As a condition of parole, the parole board:

(1) shall require a parolee who is a sexually violent predator under IC 35-38-1-7.5; and

(2) may require a parolee who is a sex or violent offender (as defined in IC 11-8-8-5);

to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a

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person's precise location.

(k) As a condition of parole, the parole board may prohibit, in accordance with IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

SECTION 2. IC 20-30-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 5.5. Internet Safety

Sec. 1. Each school corporation shall include in the school corporation's curriculum for grades 3 and above instruction concerning safe usage of the Internet by children.

Sec. 2. The:

- (1) department shall develop guidelines; and**
- (2) state board shall adopt rules under IC 4-22-2; concerning the instruction required under this chapter to assist teachers assigned to teach the material described in this chapter.**

Sec. 3. Guidelines and rules adopted under section 2 of this chapter must cover:

- (1) safe online communication;**
- (2) privacy protection;**
- (3) cyberbullying;**
- (4) viewing inappropriate material;**
- (5) file sharing;**
- (6) the importance of open communication with responsible adults; and**
- (7) any other material that the department or the state board finds will assist children in using the Internet safely.**

SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.137-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The following may be seized:

- (1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:**
 - (A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:**
 - (i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).**
 - (ii) Dealing in methamphetamine (IC 35-48-4-1.1).**

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- 1 (iii) Dealing in a schedule I, II, or III controlled substance
- 2 (IC 35-48-4-2).
- 3 (iv) Dealing in a schedule IV controlled substance
- 4 (IC 35-48-4-3).
- 5 (v) Dealing in a schedule V controlled substance
- 6 (IC 35-48-4-4).
- 7 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
- 8 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 9 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
- 10 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
- 11 (x) Dealing in marijuana, hash oil, or hashish
- 12 (IC 35-48-4-10).
- 13 (B) Any stolen (IC 35-43-4-2) or converted property
- 14 (IC 35-43-4-3) if the retail or repurchase value of that property
- 15 is one hundred dollars (\$100) or more.
- 16 (C) Any hazardous waste in violation of IC 13-30-10-4.
- 17 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
- 18 destruction (as defined in IC 35-41-1-29.4) used to commit,
- 19 used in an attempt to commit, or used in a conspiracy to
- 20 commit an offense under IC 35-47 as part of or in furtherance
- 21 of an act of terrorism (as defined by IC 35-41-1-26.5).
- 22 (2) All money, negotiable instruments, securities, weapons,
- 23 communications devices, or any property used to commit, used in
- 24 an attempt to commit, or used in a conspiracy to commit an
- 25 offense under IC 35-47 as part of or in furtherance of an act of
- 26 terrorism or commonly used as consideration for a violation of
- 27 IC 35-48-4 (other than items subject to forfeiture under
- 28 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
- 29 (A) furnished or intended to be furnished by any person in
- 30 exchange for an act that is in violation of a criminal statute;
- 31 (B) used to facilitate any violation of a criminal statute; or
- 32 (C) traceable as proceeds of the violation of a criminal statute.
- 33 (3) Any portion of real or personal property purchased with
- 34 money that is traceable as a proceed of a violation of a criminal
- 35 statute.
- 36 (4) A vehicle that is used by a person to:
- 37 (A) commit, attempt to commit, or conspire to commit;
- 38 (B) facilitate the commission of; or
- 39 (C) escape from the commission of;
- 40 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 41 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
- 42 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense

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under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any:

(A) equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4; **and**

(B) equipment, including computer equipment, used in committing an offense under IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

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(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable

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instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 4. IC 35-38-2-2.2, AS AMENDED BY P.L.216-2007, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-4.5), the court shall:

(1) require the sex offender to register with the local law enforcement authority under IC 11-8-8; ~~and~~

(2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7) for the period of probation, unless the sex offender obtains written approval from the court;

(3) require the sex offender to consent:

(A) to the search of the sex offender's computer at any time; and

(B) to the disclosure of the sex offender's Internet usage by the sex offender's Internet service provider; and

(4) prohibit the sex offender from:

(A) accessing or using certain web sites, chat rooms, or instant messaging programs; and

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(B) deleting, erasing, or tampering with information on the sex offender's computer that relates to the person's Internet usage.

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.

SECTION 5. IC 35-42-4-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) This section does not apply to the following:**

- (1) A parent, guardian, or custodian of the child.**
- (2) A person whom the child's parent, guardian, or custodian permits or has permitted the child to meet face to face.**
- (3) A person to whom the child makes a report of abuse or neglect.**
- (4) A person to whom the child reports medical symptoms that relate to or may relate to sexual activity.**

(b) As used in this section, "propose" means to command, authorize, urge, incite, request, or advise an individual.

(c) As used in this section, "reference to sexual activity" means any reference to sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(d) A person who knowingly or intentionally proposes a face to face meeting with an individual whom the person believes to be a child less than fourteen (14) years of age by using a computer network (as defined in IC 35-43-2-3(a)) or the text messaging function of a cellular telephone service commits improper communication with a minor, a Class A misdemeanor, if:

- (1) the person is at least twenty-one (21) years of age; and**
- (2) the communication by computer network or text messaging function involves, or a previous communication between the person and the child involved, a reference to sexual activity.**

However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

(e) It is a defense to a prosecution under this section that the person reasonably believed that a face to face meeting with the child was necessary to prevent harm to the child or another person.

SECTION 6. [EFFECTIVE JULY 1, 2008] IC 35-42-4-12, as

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1 added by this act, applies only to crimes committed after June 30,
2 2008.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred House Bill 1329, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 5.

Page 10, delete lines 22 through 42.

Page 11, delete lines 1 through 26.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1329 as introduced.)

RESKE, Chair

Committee Vote: yeas 10, nays 0.

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